February 10, 2000

Sent via e-mail and either fax, hand delivery or U.S. Mail

Mary L. Cottrell, Secretary

Massachusetts Department of Telecommunications and Energy

One South Station, 2nd Floor

Boston, MA 02110

re: Bell Atlantic Tariff No. 14 and 17, D.T.E. 98-57

Dear Secretary Cottrell:

Pursuant to the procedural schedules adopted in this proceeding, the Attorney General submits this letter as his initial brief regarding the issue of expanded extended loops, also known as enhanced extended links ("EELs"),(1) together with a Certificate of Service. The Attorney General has reviewed the tariff provisions proposed by Bell Atlantic-Massachusetts ("Bell Atlantic" or "the Company") concerning EELs as well as the testimony admitted on this issue. The Attorney General urges the Department of Telecommunications and Energy ("Department") to strike the collocation requirement for new EEL provisioning, and to require the availability of dispute resolution procedures to protect against disruptions arising from EEL revocations under the terms of the proposed EEL tariff.

I. Statement of the Case

On December 13, 1999, during evidentiary hearings, the Department noted that Bell Atlantic was ordered on December 10, 1999, to withdraw its EEL offering(2) and to refile a revised tariff offering that reflected the requirements of the Federal

Communications Commission ("FCC") November 5, 1999 UNE Remand Order and the FCC November 24, 1999 Supplemental Order.(3) The FCC UNE Remand Order, as revised by the Supplemental Order, required incumbent local exchange carriers like Bell Atlantic to provide EELs to CLECs if the CLECs use the EEL to provide a "significant amount" of local exchange service to customers.(4) The FCC did not define the phrase "significant amount" in its orders and did not prescribe certification procedures used to determine whether CLECs meet the "significant amount" test, though these issues may be considered pursuant to the notice of proposed rulemaking issued with the UNE Remand Order.

On December 27, 1999, Bell Atlantic filed revisions to Part B, Section 13, of its tariff M.D.T.E. No. 17 ("tariff"), setting forth proposed new terms and conditions regarding the provision of EELs. Under the proposed tariff provisions, CLECs would, as a precondition to provisioning an EEL, be required to (1) collocate in at least one Bell Atlantic central office or Bell Atlantic switch before qualifying for new EEL offerings, (2) demonstrate that the CLEC provides a significant amount of local exchange service for its customers according to Bell Atlantic's definition of "significant amount," (3) certify that the CLEC complies with Bell Atlantic's certification procedures, and (4) undergo Bell Atlantic audits of the CLEC's customer's usage.(5)

On January 10, 2000, the Department issued a revised procedural schedule providing for discovery, rebuttal testimony, evidentiary hearings and briefing on EEL. The Attorney General filed his notice of intervention pursuant to G.L. c. 12, § 11E. The Department granted full intervenor status to many carriers during the course of this docket.(6) Several parties filed direct, rebuttal and surrebuttal testimony on the EEL offering, and evidentiary hearings were conducted at the Department's offices on January 27, 2000.

II. Argument

For the reasons set forth herein, the Attorney General urges the Department to strike the collocation requirement for new EEL provisioning. Furthermore, the Department must require the availability of dispute resolution procedures to protect against disruptions arising from EEL revocations under the terms of the proposed EEL tariff.

A. The Department should strike the collocation requirement for new EEL provisioning from the tariff.

Bell Atlantic proposes to require that CLECs that want to obtain a new EEL must collocate in at least Bell Atlantic one central office or switch, notwithstanding that: (1) it imposes a collocation requirement of the type proscribed in the Department's Phase 4-E and Phase 4-K Orders;(7) (2) Bell Atlantic does not require collocation for an existing EEL; and (3) there is no technical need for collocation

as a prerequisite for a new EEL. Tr. at 1085-1086; MCIW Exh. 32 at 10; AT&T Exh. 70 at 5. Bell Atlantic has offered no new justification for a such a requirement other than to observe that the FCC may change its mind on this question in a future order.(8)

The Department should consider the Company's assertions that a collocation requirement

is not onerous in the context of the FCC's recent observation that:

The costs and delays associated with collocation arrangements ... may make it impossible as a practical, economic, and operational matter for a competitor to provide services in the local market quickly and on a wide-spread basis.

UNE Remand Order at ¶ 63.

In these circumstances, the Attorney General urges the Department to strike the collocation requirement for new EELs. It is contrary to the Department's Phase 4-E and Phase 4-K Orders, creates unnecessary costs, and is discriminatory. Moreover, collocation is not necessary to provide new EELs, as further evidenced by the fact that Bell Atlantic does not have a collocation requirement for new EELs in New York.

B. The Department must create a review process for EEL revocation appeals because the tariff contains vague terms.

The FCC has required incumbent local exchange carriers to provide EELs to CLECs if the CLECs use the EEL to provide a "significant amount" of local exchange service to customers (Supplemental Order at §§ 4-5). While the FCC did not define the phrase "substantial amount," or set forth any procedures to determine CLEC eligibility, Bell Atlantic in its proposed tariff attempted to fill in these gaps by referencing certification standards and procedures. However, the tariff leaves many issues for future resolution with the expectation of being able to work out problems later with CLECs and the Department.(9) As is discussed below, the tariff contains areas of likely future dispute, so the Department must ensure the availability of dispute resolution procedures.

1. The "significant amount" definition is vague.

Bell Atlantic's tariff defines the phrase "significant amount" in Part B, Section 13.3.1(A)(1), to require CLECs to demonstrate for some loops(10) that they provide an integrated local/toll service to the customer including at least one-third of the customer's local exchange service. The method by which compliance with the one-third requirement is not spelled out in the tariff. Tr. at 1126. Bell Atlantic's witness stated that the one-third figure "should be based on the usage that's generated" and on whether customer calls served by the EEL are local or long distance. Id. at 1126, 1135. However, that clarification is not contained in the tariff.

2. The provisions concerning auditing are incomplete.

Under the proposed tariff, Bell Atlantic will audit the CLEC EEL usage to determine whether the EEL certification should be revoked.(11) During the course of the evidentiary hearing, it became clear that the tariff language does not address significant aspects of the auditing process: selecting a third-party auditor, frequency of the audits, information required to complete the audits, and the shared responsibility for paying for the audit (Tr. at 1135-1136, 1138-1145, 1149, 1155, and 1156).

While Bell Atlantic did indicate that it intends to work with the CLECs to develop an EEL revocation procedure, including a "reasonable transition period" between certification revocation and the disconnection of an EEL (Tr. at 1127), and gave a rough outline of procedures it hoped would be used to settle disputes regarding EEL revocation (Tr. at 1140-1143), these procedures are not set forth in the proposed tariff language. The Department should require the Company to propose language specifying such a process and then take comments on that proposal.

III. Conclusion

For all of the foregoing reasons, the Attorney General urges the Department to strike the collocation requirements for new EEL provisioning and to require the Company to propose additional tariff language specifying a clear and efficient process for resolving future disputes over the application of the tariff's provisions.

Sincerely,

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Karlen J. Reed

Assistant Attorney General

Regulated Industries Division

KJR/kr

cc: Tina W. Chin, Hearing Officer

Service list for D.T.E. 98-57

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in the following tariffs: M.D.T.E. Nos. 14 and 17, filed with the Department on August 27, 1999, to become effective September 27, 1999, by New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts.	D.T.E. 98-57

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding by e-mail and either hand delivery, mail, or fax.

Dated at Boston this 10th day of February 2000.

Karlen J. Reed

Assistant Attorney General

Regulated Industries Division

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1. An EEL is the combination of the local loop and transport unbundled network elements with multiplexing provided by Bell Atlantic to the CLEC.

2. Tr. at 8.

3. Implementation of the Local Competition Provisions of the Telecommunication Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (released November 5, 1999) ("UNE Remand Order"); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Supplemental Order, FCC 99-370 (released November 24, 1999) ("Supplemental Order").

4. Supplemental Order at par. 4-5.

5. See Tariff at Section 13.1.1(E), Section 13.3.1(A), and Section 13.2.1(B).

6. AT&T Communications of New England, Inc. , MCI WorldCom, Inc., Sprint Communications Company, L.P., MediaOne Telecommunications of Massachusetts, Inc., Global NAPs, Inc., RNK Inc., Telecommunications Resellers Association, CTC Communications Corporation, Network Plus, Inc., RCN-BecoCom, LLC, Choice One Communications, Inc., Rhythms Links (formerly ACI CORP. d/b/a Accelerated Connections, Inc.), CoreComm Massachusetts, Inc., Covad Communications Company, and NorthPoint Communications. The Department also granted limited participant status to Conversent Communications of Massachusetts, LLC (formerly NEVD), Vitts Network, Inc., Z-Tel Communications, Inc., Digital Broadband Communications, Inc., J. Joseph Lydon, and Statewide Emergency Telecommunications Board. NEXTLINK is listed on the distribution service for this docket but did not request either intervenor or limited participant status.

7. Consolidated Arbitrations, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 Phase 4-E Order, (1998) (hereinafter "Phase 4-E Order"); Consolidated Arbitrations, DPU/DTE 96-73/74, 96-75, 96-80/81, 96-83, 96-94, Phase 4-K Order (May 21, 1999) (hereinafter "Phase 4-K Order). The proposed requirement is also inconsistent with the Eighth Circuit Court's findings on the issue citing Iowa Utilities Board, et al., Petitioners v. Federal Communications Commission, 120 F.3d 753, 814 (8th Cir., July 18, 1997, as amended on rehearing on October 14, 1997) as well as the Supreme Court decision confirming the FCC's authority to forbid a facilities requirement. AT&T Corp. et al. v. Iowa Utilities Board et al. __ S.Ct. __ (January 25, 1999).

8. Supplemental Order at 1.

9. During the evidentiary hearings, Bell Atlantic briefly described an administrative review process in which the CLEC would appeal to the Department to resolve its EEL disputes with Bell Atlantic (Tr. 1139-1143). Bell Atlantic suggested that the Department could use some sort of expedited procedure to resolve the dispute while maintaining the CLEC's customers' EEL service (id. at 1142).

10. This requirement applies only to DS1 and higher capacity loops, which provide at least 1.544 megabits per second of digital bandwith equivalent to 24 voice grade channels (MCIW Exh. 32 at 2).

11. Tariff, Part B, Section 13.2.1(B).